

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**MICHAEL A. HERNANDEZ,**

**Plaintiff,**

**V.**

**KEN HART, Alliance Police Officer,**

**Defendant.**

**CASE NO. 4:12CV3075**

# MEMORANDUM AND ORDER

This matter is before the court on its own motion. On April 16, 2012, Plaintiff filed his Complaint in this matter. (Filing No. [1](#).) However, Plaintiff failed to pay the filing fee or file a motion for leave to proceed in forma pauperis. (See Docket Sheet.) On April 19, 2012, the court direct Plaintiff to either tender the \$350.00 filing fee to the Clerk of the court or submit a request to proceed in forma pauperis. (Filing No. [5](#).) In doing so, the court warned Plaintiff that failure to comply by May 21, 2012, would result in the dismissal of this matter without further notice. (*Id.*)

On April 23, 2012, Plaintiff filed an Objection. (Filing No. 6.) In his Objection, Plaintiff states that the court erred in filing his Complaint as a civil lawsuit. (Id.) He states that his Complaint is a “Criminal Complaint” and the Federal Rules of Civil Procedure do not apply. (Id. at CM/ECF pp. 1-4.) However, a private plaintiff cannot force a criminal prosecution because the “authority to initiate a criminal complaint rests exclusively with state and federal prosecutors.” See Mercer v. Lexington Fayette Urban Cnty. Gov’t., No. 94-6645, 1995 WL 222178, at \*1 (6th Cir. Apr. 13, 1995) (unpublished order); see also Parkhurst v. Tabor, 569 F.3d 861, 867 (8th Cir. 2009), (quoting United States v. Batchelder, 442 U.S. 114, 124 (1979) (“Whether to prosecute and what charge to file or bring before a grand jury are decisions that generally rest in the prosecutor’s discretion.”)).

In light of this, and Plaintiff's failure to either tender the \$350.00 filing fee or submit a request to proceed in forma pauperis by the court's May 21, 2012, deadline, Plaintiff's Complaint is dismissed.

IT IS THEREFORE ORDERED that:

1. Plaintiff's Objection (Filing No. [6](#)) is denied;
2. Plaintiff's Complaint (Filing No. [1](#)) is dismissed without prejudice because Plaintiff failed to comply with this court's orders; and
3. A separate judgment will be entered in accordance with this Memorandum and Order.

DATED this 25<sup>th</sup> day of May, 2012.

BY THE COURT:

s/Laurie Smith Camp  
Chief United States District Judge

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